

February 9, 1965. *Pass 2/17*
Judiciary.

House File 206

By HUTCHINS and O'MALLEY.

Passed House, Date *2-25-65* Passed Senate, Date *4/13*

Vote: Ayes *11* Nays *33* Vote: Ayes *35* Nays *15*

Approved *April 19, 1965*

Judiciary 3/8
motion to reconsider vote
tabled 4/13

A BILL FOR

An Act to amend chapter six hundred nineteen (619), Code 1962, relating to the burden of proof of contributory negligence in civil actions.

Be It Enacted by the General Assembly of the State of Iowa:

- 1 Section 1. Chapter six hundred nineteen (619), Code 1962,
- 2 is hereby amended by adding a new section thereto as follows:
- 3 "In all actions brought in the courts of this state to
- 4 recover damages caused by negligence of a defendant in which
- 5 the issue of contributory negligence of the plaintiff, actual
- 6 or imputed, is relied on as a complete defense and bar to
- 7 recovery, the burden of pleading and proving such contributory
- 8 negligence shall rest on the defendant. As used in this
- 9 section, the term 'plaintiff' shall include a defendant filing
- 10 a counterclaim or cross-petition, and the term 'defendant'
- 11 shall include a plaintiff against whom a counterclaim or cross-
- 12 petition has been filed."

EXPLANATION OF HOUSE FILE 206

This Act will make the Iowa law consistent with the law of practically every other state and of the federal courts. The present law puts the burden of pleading and proving contributory negligence on the plaintiff which is practically impossible in cases of death or amnesia. The Iowa Supreme Court has resorted to the so-called "no eye-witness rule" to supply an inference of due care, but this is unsatisfactory. In the recent case of Chicago, R. I. & Pac. R. Co. v. Breckenridge, 333 Fed. (2d) 790, Judge Van Oosterhout (a member of the federal court of appeals from Iowa), commenting on several Iowa based cases, stated: "Judge Graven in Mast and this court in Mast, Lovejoy and Stuffelbean deal extensively with the peculiar Iowa rule as to contributory negligence."

The adoption of this Act would not affect actions brought by an employee against an employer, which would continue to be governed by sections 85.7, 85.15, 85.16 and 88.14, Code 1962, nor actions by a railroad employee against a railroad, which will continue to be governed by section 479.124, Code 1962. In addition, Rule 97, Rules of Civil Procedure, provides that in an action by a passenger against a common carrier, the common carrier is required to plead and prove contributory negligence, and then only in mitigation of damages.

HOUSE FILE 206

1 Amend House File 206 by striking all after the enacting clause
2 and substituting in lieu thereof the following:
3 "Section 1. Chapter six hundred nineteen (619), Code 1962,
4 is hereby amended by adding a new section thereto as follows:
5 "In all actions brought in the courts of this state to
6 recover damages of a defendant in which contributory negligence
7 of the plaintiff, actual or imputed, was heretofore a complete
8 defense or bar to recovery, the plaintiff shall not hereafter,
9 have the burden of pleading and proving his freedom from contributory
10 negligence, and if the defendant relies upon negligence of the
11 plaintiff as a complete defense or bar to plaintiff's recovery,
12 the defendant shall have the burden of pleading and proving
13 negligence of the plaintiff, if any, and that it was a proximate
14 cause of the injury or damage. As used in this section, the term
15 'plaintiff' shall include a defendant filing a counterclaim or
16 cross-petition, and the term 'defendant' shall include a plaintiff
17 against whom a counterclaim or cross-petition has been filed." *adopted*
2/25

Filed
February 22, 1965.

DENATO of Polk.